

**BEFORE MICHAEL D. RILEY
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

**DAVID SIEBOLD,
Complainant,**

v.

Admin. Proceeding No. 11-AP-FP-02001

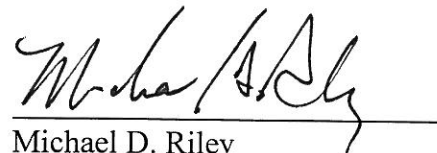
**STATE FARM FIRE & CASUALTY
INSURANCE CO.,
Respondent.**

FINAL ORDER 11-AP-FP-02001

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. It is consequently ORDERED that the consumer complaint of David Seibold against State Farm Fire & Casualty Insurance Company, and the same are hereby, dismissed with prejudice.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted is preserved.

ENTERED this 20th day of August, 2012.



Michael D. Riley
Insurance Commissioner
State of West Virginia

**BEFORE MICHAEL D. RILEY
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

**DAVID SIEBOLD,
Complainant,**

v.

Admin. Proceeding No. 11-AP-FP-02001

**STATE FARM FIRE & CASUALTY
INSURANCE CO.,
Respondent.**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On December 19, 2011, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. As more fully explained below, no one appeared on behalf of David G. Siebold. K. Kay Fuller, Esquire, David O'Harrah, Field Property Adjuster, and Chad Bennett, Property Casualty Adjuster, appeared on behalf of State Farm Fire & Casualty Insurance Company. The matter was deemed submitted for recommended decision.

Issues Presented

Whether the Complainant, David G. Siebold, should be granted a continuance.

Findings of Fact

1. David G. Siebold filed a complaint with the Offices of the Insurance Commissioner on May 16, 2010, against State Farm Fire & Casualty Insurance Company.
2. A hearing was initially set for March 10, 2011, but due to a conflict in the schedule of the Hearing Examiner, the hearing was continued until May 6, 2011.
3. On May 4, 2011, Ann Schwarzkopf contacted the Hearing Examiner's office via email, stating that neither Mr. Siebold or his counsel could attend the hearing on May 6, 2011.

4. With the agreement of counsel for State Farm Fire & Casualty Company, the hearing was continued to August 31, 2011.

5. Since Ms. Schwartzkopf was not the named complainant, the Hearing Examiner requested an authorization from Mr. Siebold that Ms. Schwartzkopf could act on his behalf. The authorization was received on May 9, 2011.

6. Ann Schwartzkopf agreed to the August 31, 2011, hearing date.

7. On August 29 and 30, 2011, several conversations were held with Ms. Schwarzkopf in which she requested a continuance of the August 31, 2011, hearing due to the fact she had to attend a funeral.

8. There was an attempt to schedule the new hearing on October 5, 2011, however, that date was unacceptable to the parties.

9. On September 21, 2011, a hearing was scheduled for December 19, 2011 at 9:00 a.m. At that time, all parties were sent a letter stating that no more motions for continuance would be granted.

10. On December 14, 2011, the Hearing Examiner's office contacted the parties to make sure they would be available on December 19, 2011. All parties stated they would attend.

11. Counsel for State Farm Fire & Casualty Company, along with one witness traveled from Martinsburg, West Virginia, with another witness traveling from Frederick, Maryland on Sunday, December 18, 2011.

12. At approximately 4:13 p.m. on Sunday, December 18, 2011, Mr. Siebold sent a fax to the Hearing Examiner's office requesting another continuance. Since it was a Sunday, no one was present in the office to receive the faxed letter.

13. Counsel for the Insurer did not receive the Motion for a Continuance until after 8:00 p.m. via email. At that point, both counsel and the two witnesses had traveled to Charleston, West Virginia.

14. In his Motion to Continue, no basis for the continuance was mentioned other than that Ms. Schwarzkopf was unable to attend and Mr. Siebold was working in Texas. During the entire time that this matter has been before the Offices of the Insurance Commissioner, Mr. Siebold has represented that he had been working out of state.

15. Counsel for State Farm Fire & Casualty Company and two witnesses attended the previously scheduled hearing. Prior to the start of the hearing, State Farm Fire & Casualty Company's counsel stated she opposed a continuance of the hearing, moved for dismissal of the Complaint with prejudice, and moved for costs and sanctions. Once the hearing began she reiterated her motions and introduced David O'Harrah, Field Property Adjuster, and Chad Bennett, Property Casualty Adjuster.

Discussion

A complainant has a duty to prosecute his claim. In this matter Mr. Siebold has requested three different continuances, May 4, 2011, August 29, 2011 and December 14, 2011.

The continuance request on May 4, 2011, was for a hearing scheduled on May 6, 2011. The telephonic motion was made by Ms. Schwarzkopf less than 48 hours prior to the scheduled hearing. The Hearing Examiner contacted counsel for State Farm Fire & Casualty Company. Counsel agreed to the continuance. The hearing was continued.

After consultation with both parties an agreement was reached and a new hearing date was sent for August 31, 2011. Again, less than 48 hours prior to the hearing, Ms. Schwarzkopf informed

the hearing examiner that she would be unable to attend due to a funeral.

After the second hearing was continued, both parties were informed that no more motions for a continuance would be granted. On September 21, 2011, the parties again agreed to a new hearing date of December 19, 2011. A week prior the hearing each party was contacted to insure their presence at the hearing. Both parties indicated that they would be present at the hearing.

Less than 24 hours before the start of the hearing and after Respondent's counsel had left for Charleston, Ms. Schwarzkopf sent a fax to the office of the Hearing Examiner requesting another continuance. This fax was sent on a Sunday afternoon when Ms. Schwarzkopf knew or should have known that it would not be read until the next day.

It is clear that not only has the Complainant failed to timely prosecute this case, he has failed on numerous occasions to give proper notice for his motions for a continuance.

Even after being told that there would be no more continuances granted, the Complainant again attempted to obtain one. This motion was made the day before the hearing even though it was a Sunday and he would have known that counsel for the Respondent would have left to travel to Charleston.

West Virginia Code of State Rules §114-13-6.11 addresses the issue of a party's failure to appear. It states:

Failure to Appear. – Notwithstanding the failure of any party to appear at a hearing in accordance with notice provided, the commissioner may proceed to hold a hearing at the time and place specified in said notice and may make findings of fact and conclusions of law and enter an order upon the testimony and evidence taken at the hearing.

As is clear from the discussion above, the Complainant failed to appear at the hearing even though no continuance had been granted.

In addition, §114-13-6.8 deals with improper conduct.

Improper conduct. - - The Hearings Examiner may exclude from the place of hearing or from further participation in the hearing any person who engages in improper conduct.

Failure to properly notice the Respondent in this action in a timely manner that he would be seeking another continuance is clearly improper conduct. This improper conduct caused the Respondent to incur expenses and time that were not necessary.

Conclusions of Law

The following are made as conclusions of law:

Complainant, by his failure to show for his hearing, as well as his failure to timely notice his motion for a continuance, violated West Virginia Code of State Rules §§114-13-6.8 and 114-13-6.11.

Recommended Decision

It is recommended that the Complainant's claim be dismissed with prejudice.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: June 4, 2012